

Panaji, 12th August, 2004 (Sravana 21, 1926)

SERIES II No. 20

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/1/2003-LAB (Part)

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 22-10-2003 in reference No. IT/75/92, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 6th November, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/75/92

Shri Suresh N. Naik,
C/o. Shri K. V. Nadkarny,
K.T.C. Drivers & Allied
Employees Association,
M-25, Housing Board Colony,
Vidyanagar, Margao-Goa.

.... Workman/Party I

V/s

The Managing Director,
M/s. Kadamba Transport
Corp. Ltd.,
Panaji-Goa.

.... Employer/Party II

Workman/Party-I - Represented by Shri K. V. Nadkarni.

Employer/Party-II - Represented by Adv. Shri A. Palekar.

Dated: 22-10-2003

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 20-11-92 bearing No. 28/50/92-LAB referred the following dispute for adjudication of this Tribunal.

- Whether the action of the management of M/s. Kadamba Transport Corporation Ltd., in refusing to pay full wages to Shri Suresh R. Naik, Driver, for the period from 19-2-92 to 3-3-92, is legal and justified ?
- If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/75/92 and Registered A.D. notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party-I (for short 'workman') filed his statement of claim at Exb.-4. The facts of the case in brief as pleaded by the workman are that he was employed as a driver by the Employer/Party-II (for short "Employer"). That the Depot Manager illegally refused the workman to report for duty from 19-2-92 to 3-3-92. That the said action of the Depot Manager at Margao is illegal because he had no powers to refuse duty to any workman employed with the employer so long as he is not dismissed or terminated from service by an order in writing. The workman claimed that the action of the employer in not paying him full wages from 19-2-92 to 3-3-92 is illegal and unjustified and therefore he is entitled to receive full

wages for the above said period. The employer filed written statement at Exb.-5 denying the contentions made by the workman in the claim statement. By way of preliminary objections the employer stated that the dispute of refusal to pay full wages to the workman for the period from 19-2-92 to 2-3-92 cannot be an industrial dispute and therefore the reference is bad in law. The employer denied that the action of the Depot Manager, Margao in refusing to allow the workman to report for duty from 19-2-92 till 3-3-92 without giving a joining report is illegal and bad in law. The employer denied that the Depot Manager has no power to refuse duty to any workman employed with the employer. The employer denied that the workman is entitled to full wages from 19-2-92 to 3-3-92. The workman thereafter filed rejoinder at Exb.-6.

3. On the pleadings of the parties issues were framed at Exb.-7 and thereafter the case was fixed for recording the evidence of the workman. After the evidence of the parties was recorded the case was fixed for hearing final arguments. However at this stage the parties submitted that they are trying to arrive at an amicable settlement and accordingly at their request the case was fixed for filing the terms of settlements. Accordingly on 16-10-03 the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 16-10-03 at Exb.-14. The parties prayed that the consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 16-10-03 Exb.-14.

ORDER

1. It is agreed by and between the parties that Party-I Shri Suresh R. Naik, workman concerned in the above reference shall be paid an amount of Rs. 700/- (Rupees seven hundred only) in full and final settlement of his claim arising out of above dispute.
2. That the workman Party-I, Shri Suresh R. Naik has agreed to accept the said amount mentioned in clause 1 above in full and final settlement of his claim in respect of above dispute pending hearing before the Hon. Tribunal.
3. It is hereby agreed that the settlement arrived at in the present reference shall have no bearing of whatsoever nature on the other matters including matter bearing No. C-IT/34/97 and LCC/09/03 pending adjudication before the Industrial Tribunal and Labour Court.

4. It is hereby agreed that the Party II shall pay the aforesaid amount of Rs. 700/- within one week from the date of signing of these terms.

No order as to cost.

Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB-Part

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 21-10-2003 in reference No. IT/65/2000, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 6th November, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/65/2000

Shri Manohar Y. Shirodkar,
H. No. 303, Near Cine Vishant,
Aquem, Malbhat,
Margao-Goa.

.... Workman/Party I

V/s

M/s Sudarshan Chit (India)
Ltd., Bagawadi Building,
Station Road, Margao-Goa.

.... Employer/Party II

Workman/Party-I – Represented by Shri A. A. Jog.

Employer/Party-II – Represented by its Personnel
Officer, Shri Mohan Kumar.

Dated: 21-10-2003

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15th September, 2000, bearing No. IRM/CON/SG/(17)/2000/4627 referred the following dispute for adjudication of this Tribunal.

(1) "Whether Shri Manohar Y. Shirodkar can be construed as a "workman" within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

(2) (a) If the answer to (1) above is in affirmative whether the action of the management of M/s. Sudarshan Chit (India) Limited, Margao, in terminating the services of Shri Manohar Y. Shirodkar, Field Assistant, with effect from the last date of his attendance at Margao Branch, is legal and justified.

(b) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/65/2000 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "Workman") filed his statement of claim at Exb.-3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short "Employer") as a field assistant w.e.f. 1-3-96 and an agreement to that effect was signed between the workman and the employer. The workman contended that he is a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 and his services were illegally terminated by the employer without following the conditions precedent to retrenchment. The workman claimed that he is entitled to reinstatement in service with full back wages. The employer filed written statement at Exb.-4. The employer denied that the workman is a workman as contemplated under Section 2(s) of the Industrial Disputes Act, 1947 as the nature of duties performed by him was that of canvassing the business for the company and he was eligible for commission thereof. The employer stated that the services of the workman were transferred w.e.f. 27-10-99 at Dombivli Branch of the employer at Mumbai. The employer stated that w.e.f. 6-1-2000 the workman voluntarily abandoned services from its Dombivli Branch and therefore his services stood terminated w.e.f. the said date. The employer denied that the services of the workman were illegally terminated as claimed by the workman and stated that the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.-5. On the pleadings of the parties issues were framed at Exb.-6 and thereafter the case was fixed for recording the evidence of the workman.

3. The evidence of the workman was completed on 2-8-2002 and thereafter the deposition of the employer's

witness Shri Mohan Kumar was partly recorded i.e. his examination in Chief was recorded on 19-11-02 and the case was posted for cross examination of the said witness. Thereafter the parties submitted that they are trying to arrive at an amicable settlement and therefore at their request the case was fixed for filing the terms of the settlement. Accordingly on 9-10-2003 the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 9-10-2003 at Exb.-12. The parties prayed that the award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 9-10-2003 which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 9-10-03 Exb.-12.

ORDER

1. The Employer/Party-II shall pay a sum of Rs. 10,000/- (Rupees ten thousand only) to the Workman/Party-I by a DD No. 750122 dated 4-9-2003 as full and final settlement of the statutory dues receivable from the Employer/Party-II which include Provident Fund of Rs. 4,588.67 Security deposit with interest of Rs. 3,117/-.
2. On receipt of the above amount of Rs. 10,000/- the Workman/Party-I shall issue an receipt in full and final settlement of all the statutory dues receivable from the Employer/Party-II and the Workman/Party-I shall not claim in future any amount from the Employer/Party-II.
3. The Workman/Party-I shall have no claim whatsoever nature against the Employer/Party-II and the dispute has been resolved by an amicable settlement.
4. The above parties pray this Hon'ble Tribunal to pass an consent award in terms of this settlement, for which act of kindness the parties shall ever remain.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB-Part

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 28-10-2003 in reference No. IT/73/2002, is hereby published as required by

Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

M. T. Verlekar, Under Secretary (Labour).

Panaji, 13th November, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. Case No. IT/73/2002

Smt. Sabina D'Souza,
Fondacwado,
Parra, Bardez-Goa.

.... Workman/Party I

V/s

M/s Rotoflex Filmpack
Industries, D-2/15,
Tivim Industrial Estate,
Karaswada, Mapusa-Goa.

.... Employer/Party II

Workman/Party-I – Represented by Adv. Shri Suhas Naik.

Employer/Party-II – Represented by Adv. Shri P. J. Kamat.

Dated: 28-10-2003

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-11-2002 bearing No. 28/50/2002-LAB referred the following dispute for adjudication of this Tribunal.

- Whether the action of the management of M/s. Rotoflex Filmpack Industries, Thivim Industrial Estate, Karaswada, Mapusa-Goa, in terminating the services of Smt. Sabina D'Souza, Clerk, with effect from 20-8-2001, is legal and justified?
- If not, to what relief the workman is entitled?"
- On receipt of the reference a case was registered under No. IT/73/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "Workman") filed her statement of claim at Exb.-4. The facts of the case in brief as pleaded by the

workman are that she was employed with the Employer-Party II (for short, "Employer") as a regular worker from 5-7-1989. That for no reason she was orally threatened and her services were terminated on 18-8-2001 because she had refused to submit her resignation letter. That she is coming from a poor family and she has to look after her school going children. The workman claimed that termination of her services is illegal and unjustified and therefore she is entitled to reinstatement in service with all back wages.

3. The employer filed written statement at Exb.-5. The employer denied that the services of the workman were terminated. The employer stated that the workman was employed as a clerk from 5-7-1989 and was entrusted with the work of clerical nature. The employer stated that the workman was required to send daily information in the prescribed format through E mail to the office of the employer at Mumbai but she suddenly refused to do the said work from around June/July 2001 thereby disobeying the reasonable orders of the superiors. The employer stated that on 26-7-2001 at about 9.00 a.m. the workman was instructed to write the cash vouchers relating to the manufacturing expense account and when at about 9.30 a.m. the Proprietor went to collect the said vouchers from the workman he found that the work was not done. The employer stated that when the Proprietor again instructed the workman to do the work immediately she refused to do so and thereafter remained absent from 27-7-2001 to 7-8-2001 till 1.00 p.m. The employer stated that on 10-8-2001 the workman was issued a show cause notice for the acts of misconduct committed by her before remaining absent from 27-7-2001 and the workman filed her explanation dated 14-8-2001. The employer stated that thereafter the workman was issued a chargesheet dated 15-10-01. The employer stated that on or about 24-8-2001 the workman sent a letter dated 21-8-2001 making false and wild allegations against the Proprietor of the employer when infact she had deserted the work. The employer stated that the chargesheet which was sent to the workman by registered A.D. post was returned unserved with the remark 'unclaimed' and thereafter the employer received a notice from the Asst. Labour Commissioner, Mapusa alleging refusal of employment to the workman w.e.f. 20-8-2001. The employer stated that the Asst. Labour Commissioner was informed by letter dated 14-1-2002 that the services of the workman were not terminated but she remained absent from 20-8-2001 and the Asst. Labour Commissioner, Mapusa was asked to direct the workman to report for work immediately without any delay. The employer stated that inspite of the offer given the workman did not report for work and continued to remain absent. The employer denied that the services of the workman were terminated or she was refused employment. The employer denied that the workman is entitled to any relief as claimed by her. The workman thereafter filed rejoinder at Exb.-6. On the pleadings of the parties issues were framed at Exb.-7. At this stage the parties submitted that they are trying to arrive at an amicable settlement and at their request the case

was fixed on 17-10-2003 for filing the terms of the settlement. Accordingly on this date the parties appeared and they submitted that the dispute between them is amicably settled. The parties filed the terms of settlement dated 17-10-2003 at Exb.-8. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement dated 17-10-03 Exb.-8 and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 17-10-03 Exb.-8.

ORDER

1. It is agreed between the parties that the employer shall pay an amount of Rs. 20,000/- (Rupees twenty thousand only) to Mrs. Sabina D'Souza in full and final settlement of all her dues including Gratuity etc.
2. It is agreed between the parties that Mrs. Sabina D'Souza has been properly relieved from the services w.e.f. 28-8-2001.
3. It is agreed and declared that the amount payable by the employer to Mrs. Sabina D'Souza in the manner hereinabove provided for is in full and final settlement and satisfaction of all her claims against the employer including claim for compensation for loss of office or otherwise whatsoever.
4. It is agreed between the parties that the amount payable as per clause (1) above shall be paid in two equal instalments namely Rs. 10,000/- on 15-11-2003 and balance Rs. 10,000/- on 15-2-2004 by post dated cheques.

No order as to cost.

Inform the Government accordingly.

Sd/-
(Ajit J. Agui),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB-Part

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 11-11-2003 in reference No. IT/24/90, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 5th December, 2003.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/24/90

S/Shri Gulab Yadav and
Bhimsen Pardeshi,
rep. by General Secretary,
Gomantak Mazdoor Sangh,
Ponda-Goa.

.... Workmen/Party I

V/s

M/s. Goa Steel Rolling Mills
Pvt. Ltd.,
Bicholim-Goa.

.... Employer/Party II

Workmen/Party-I - Represented by Adv. Shri G.
Shirodkar.

Employer/Party-II - Represented by Adv. Shri A.
Nigalye.

Dated 11-11-2003

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-6-1990 bearing No. 28/20/90-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Goa Steel Rolling Mills Private Limited, Bicholim-Goa, in terminating the services of S/Shri Gulab Yadav, and Bhimsen Pardeshi with effect from 28-8-1989 and 25-9-1989 respectively is legal and justified?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/24/90 and registered A/D notice was issued to the parties. In pursuance to the said notice parties put in their appearance. The Workman/Party I (for short, "Workman") filed their statement of claim at Exb.-5. The facts of the case in brief as pleaded by the workmen are that the workmen Shri Gulab Yadav and Shri Bhimsen Pardeshi were employed with the Employer/Party II (for short, "Employer") and they were chargesheeted for having assaulted the other co-workers and also for obstructing the co-workers from performing their duties. That after the chargesheet was issued domestic enquiry was held against both the workmen and based on the findings given by the enquiry officer show cause notice was issued to the workmen as to why their services should not be terminated. That the reply given by the workman to the show cause notice was not satisfactory and therefore the services of the workman Shri Gulab Yadav were terminated by the employer w.e.f. 28-8-1989

and that of the workman Shri Bhimsen Paradeshi were terminated w.e.f 25-9-89. The workman contended that the enquiry conducted against them was not fair and proper and they were not given proper opportunity of being represented by the office bearers of the union. The workman also contended that the findings given by the enquiry officer are perverse and they are not based on the evidence on record. The workman further contended that the dispute raised by the workmen was pending before this tribunal when their services were terminated and therefore permission ought to have been sought from the Tribunal before terminating their services. The workman contended that termination of their services by the employer is illegal and unjustified and they are liable to be reinstated in service with full back wages.

3. The employer filed written statement at Exb.-6. As regards the workman Shri Gulab Yadav the employer stated that his past service record was not satisfactory and he was issued a memo for unauthorised absentism in July, 1986 and in September, 86 and that he was also issued a memo dated 20-1-89 for assaulting a contract labourer working in the factory of the employer on 15-1-89 at about 9 a.m. and thereafter he was chargesheeted on 21-2-89. The employer stated that enquiry was held into the said chargesheet and the enquiry officer submitted his findings dated 17th May, 1989 holding the workman Shri Gulab Yadav guilty of the charges levelled against him. The employer stated that Shri Gulab Yadav was given full opportunity to defend himself in the enquiry and he was represented by his co-worker Shri V. K. Balkrishna. The employer stated that Shri Gulab Yadav was issued a show cause notice before terminating his services and after considering his reply he was discharged from service w.e.f. 28-8-89. As regards the workman Shri Bhimsen Paradeshi the employer stated that his past service record was not satisfactory and he was issued memos/warnings from time to time for deserting the place of work without permission and also for remaining absent without permission. The employer stated that he was chargesheeted because he had assaulted another workman and also he obstructed other workers from performing their duties. The employer stated that after receiving reply to the chargesheet an enquiry was held against him and he was given full opportunity to defend himself in the enquiry in which he was represented by his co-worker Shri V. K. Balkrishna. The employer denied that findings given by the enquiry officer holding the workman Shri Bhimsen Paradeshi guilty of the charges levelled against him are perverse or that they are not based on the evidence on record. The employer contended that termination of services of both the workmen is legal and justified and they are not entitled to any relief as claimed by them.

4. On the pleadings of the parties issues were framed at Exb.-7. The issue No. 1 which was relating to the fairness of the enquiry conducted against the workman was treated as preliminary issue. After the parties led

evidence on the said issue, this Tribunal by findings dated 19-10-95 held that the domestic enquiry conducted against the workman is not fair and proper and therefore the enquiry was set aside. The parties were directed to lead evidence on the merits of the case. Accordingly the evidence of the parties was recorded and thereafter the parties submitted that the dispute between them is likely to be settled and accordingly at their request the case was fixed for filing the terms of the settlement. Accordingly on 6-11-03 the parties appeared and they submitted that the dispute between them is amicably settled and they filed the terms of the settlement dated 30-10-03 at Exb.-27. The parties prayed that consent award be passed in terms of the settlement dated 30-10-03 Exb.-27. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said terms of the settlement are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 30-10-03 Exb.-27.

ORDER

1. It is agreed by and between the parties that the Employer/Party-II shall pay to Shri Gulab Yadav a sum of Rs. 56,820/- (Rupees fifty six thousand eight hundred and twenty only) and to Shri Bhimsen Paradeshi a sum of Rs. 76,260/- (Rupees seventy six thousand two hundred and sixty only) in full and final settlement of their claims in the above reference No. IT/24/90.
2. The aforesaid sums of Rs. 56,820/- (Rupees fifty six thousand eight hundred and twenty only) and Rs. 76,260/- (Rupees seventy six thousand two hundred and sixty only) shall be paid by the Employer/Party-II to the Workmen/Party-I in six equal monthly instalments beginning from October, 2003 and ending in March, 2004. Each of the said instalments shall be paid in the manner stated in Clause No. 3 hereinbelow.
3. (a) The Employer/Party-II has issued to the Workmen/Party-I Shri Gulab Yadav the following crossed post-dated cheques today drawn on Deendayal Nagri Pat Saunstha Maryadit, Bicholim Branch:-

Cheque No.		Date which the cheque bears	Amount
1.	09113	22-10-2003	Rs. 9470.00
2.	09114	29-11-2003	Rs. 9470.00
3.	09115	31-12-2003	Rs. 9470.00
4.	09116	31-01-2004	Rs. 9470.00
5.	09117	28-02-2004	Rs. 9470.00
6.	09118	31-03-2004	Rs. 9470.00
			Rs. 56820.00

- (b) The Employer/Party-II has issued to the Workman/Party-I Shri Bhimsen Pardeshi the following crossed post-dated cheques today drawn on Deendayal Nagrik Pat Sauntha Maryadit, Bicholim Branch:-

Cheque No.	Date which the cheque bears	Amount
1. 09119	22-10-2003	Rs. 12,710.00
2. 09120	29-11-2003	Rs. 12,710.00
3. 09121	31-12-2003	Rs. 12,710.00
4. 09122	31-01-2004	Rs. 12,710.00
5. 09123	28-02-2004	Rs. 12,710.00
6. 09124	31-03-2004	Rs. 12,710.00

The Workmen/Party-I Shri Gulab Yadav and Shri Bhimsen Pardeshi admit and acknowledge the receipt of the aforesaid cheques.

4. The Workman/Party-I Shri Gulab Yadav hereby undertakes that he will quit and vacate the residential premises allotted to him by the Party-II at Bicholim, Goa and hand over the peaceful possession thereof to the Employer/Party-II.
5. In the event the Workman/Party-I Shri Gulab Yadav fails to vacate the said residential premises on or before 30-3-2004, he shall be liable to pay to the Employer/Party-II a sum of Rs. 100/- (Rupees one hundred only) per day for the delay of each day in vacating the premises from 31-3-2004 till the date he vacates the same and hand over vacant peaceful possession thereof to the Employer/Party-II.
6. The parties hereby declare that their dispute in reference No. IT/24/90 and all other disputes are conclusively settled with the signing of this settlement and they have no dispute/claim and/or demand of whatsoever nature against each other.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB-Part

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 7-11-2003 in reference No. IT/99/94, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 5th December, 2003.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/99/94

Shri Shridar Goltekar,
Sodiem,
Siolim, Bardez-Goa.

.... Workman/Party I

V/s

M/s. Photophone Industries Ltd.,
Tivim Karaswada,
Industrial Estate Mapusa,
Bardez-Goa.

.... Employer/Party II

Workman/Party-I - Represented by Adv. Shri D. P. Bhise.

Employer/Party-II - Represented by Adv. Shri P. J. Kamat.

Panaji, dated 7-11-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by order dated 21-9-94 bearing No. 28/38/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Photophone Industries (I) Ltd., Thivim, Karaswada, Bardez, Goa, in terminating the services of Shri Shridas Goltekar, Assistant, with effect from 31-10-92 is legal and justified?

If not, what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/91/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party-I (for short,

"Workman") filed his statement of claim at Exb.-5. The facts of the case in brief as pleaded by the workman are that he was employed by the Employer-Party II (for short, "employer") w.e.f. 8-11-83 and from 8-5-84 he was appointed as a clerk. That subsequently he was promoted as an Assistant w.e.f. 1-7-87. That initially he was posted at the commercial godown of the employer at Tivim Industrial Estate, and from September, 1986 he was posted at the commercial godown, Bicholim. That on 3-4-90 he reported for duties as usual at 8.30 a.m. at the commercial godown, Tivim Industrial Estate to give report of the previous day's despatches of goods and to receive fresh instructions. That he left the said godown at 9.30 a.m. and reached commercial godown at Bicholim at about 10.30 a.m. That the office timing being 9.00 a.m., the commercial godown at Bicholim was already opened at 9.00 a.m. That somewhere in the middle of the year 1989 the workman was informed by the packing staff that two cartons containing 100 film rolls each were short from different master packs stored in the cold storage and this fact was brought to the notice of the employer. That at that time and during the time the workman was working at Bicholim the cold storage door was never kept locked as it could not be locked because the door was soaked with water and it had expanded. That on 3-4-90 on reaching his work table he removed the key from the drawer and opened the steel almirah for keeping his lunch box as usual and at that time he found that two cartons were missing and as such he reported this matter to his immediate superior Mr. S. M. Shetye, the Manager of Order Processing at about 11.00 a.m., and said Mr. Shetye visited the Bicholim commercial godown. That thereafter at the instance of Mr. Shetye he wrote a letter dated 3-4-90 to Mr. M. K. Kaul the Incharge of Bicholim Unit giving the details of the incident regarding the missing of film cartons. That at about 4.30 p.m. he and other employees of packing and despatch section were taken to the Bicholim Police Station and after preliminary investigation they were allowed to go home. That on 4-4-90 he reported at 8.30 a.m. at Tivim Industrial Estate and thereafter at Bicholim as per the instructions given to him but he was not given routine work by his immediate superior Mr. Shetye and one Mr. Innocence D'Souza, Jr. Officer was given the charge of duties of the workman at Bicholim commercial godown by Mr. Shetye. That on 11-4-90 at the instructions and directions from the Manager, Accounts, Mr. O. K. Kulkarni, the workman was compelled to sign a letter stating that there was an excess stock of 248 film rolls after 1988-89 annual audit and that his report dated 3-4-90 was not correct. That subsequently Mr. Kulkarni told the workman to pay to the employer a sum of Rs. 15,514.88 towards the cost of 248 films. That he was not responsible for making any payment and the employer was only trying to make the workman a scape goat. That thereafter the office bearers of the union namely Mr. Casmiro D'Souza, Mr. Geraldo Fernandes and the other office bearers were called by Mr. Kulkarni for discussions and they were told that if a sum of Rs. 10,000/- was arranged by the workman, he was not to face the unpleasant police action and disciplinary

action from the employer. That on 16-4-90 Mr. Kulkarni brought a draft of the letter and asked the workman to write the said letter in his own handwriting putting the date as 11-4-90. That being under pressure and also being mentally upset the workman wrote the said letter and signed in the presence of two office bearers of the union and on the same day the office bearers of the union paid Rs. 10,000/- to the employer for which the receipt dated 15-4-90 was issued. That the letter dated 11-4-90 and all the other letters were signed by him under duress, misrepresentation and undue influence exercised by the employer. That before making the workman to sign the letter dated 11-4-90 Mr. Kulkarni had stated that if the workman paid the cost of the missing film cartons he could start work immediately without any further harassment. That in spite of the fact that the union had paid Rs. 10,000/- in the circumstances stated above, instead of finalising an amicable settlement and getting the workman for work the employer issued a notice/charge sheet dated 30-4-90 to the workman and when the departmental enquiry was in progress he was placed under suspension by letter dated 2nd August, 1990. That on completion of the departmental enquiry the Inquiry Officer by his findings dated 1-7-91 held the workman guilty of the charges levelled against him. That the employer furnished to him the copy of the findings of the Inquiry Officer and he was asked to submit his explanation as to why punishment should be awarded to him. That by letter dated 14-8-92 he requested for 2 months time to submit his explanation but by letter dated 20-8-92 the employer refused to give him two months time and he was granted only one month's time to submit his reply. That the workman could not submit his reply within one month's time granted to him and thereafter he received a letter dated 31-10-92 from the employer informing him that he was dismissed from service with immediate effect. The workman contended that the enquiry conducted against him is without complying with the Certified Standing Orders of the employer and without following the principles of natural justice. The workman contended that the enquiry proceedings were held in English though specific request was made by him in terms of Certified Standing Orders. The workman contended that the charge sheet was not issued to him by his appointing authority and as such the said charge sheet is without jurisdiction and is in contravention of Certified Standing Orders. The workman contended that the termination of his service by the employer is by way of unfair labour practice and it is illegal and unjustified. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and other consequential benefits.

3. The employer filed written statement at Exb.-6. The employer admitted that the workman was employed initially as an apprentice clerk w.e.f. 8-11-83 and stated that on completion of his training he was appointed as a stores clerk from 8-5-84 for probation of 6 months and was thereafter confirmed in service from 8-11-84 and was subsequently promoted as an Assistant from 1-7-87. The

employer stated that the workman was posted at the commercial godown of the employer at Bicholim and he was required to receive the goods from the Customs Bond, Tivim (Karaswada), finished goods from the Bicholim Factory and packing materials from Goa and Bombay vendors and he was also required to deliver the goods as per the delivery order, stock transfer notes, loan S. R., M. D. N. duly approved by authorised signatories and he was required to check the goods received, place them properly in the stores and record them in the respective bin cards maintained by him and ensure that the despatched documents are properly authorised, delivery is properly done and the material delivered is properly and timely recorded in the bin cards etc. The employer stated that on 3-4-90 at about 10.00 a.m. Mr. Shetye visited the commercial godown at Bicholim where he was informed by the workman that two boxes of films containing 100 films each were missing out of the lot which was kept in the cupboard and when the stock was checked again physically 331 films were found as against the bin card entry of 569 films and thus there was shortage of 238 films as per the bin card entries maintained by the workman. The employer stated that the matter was thereafter scrutinised with the records of 1988-89 and 1989-90 and it was noticed that there was shortage of 248 films and that the said scrutinising was made in the presence of the workmen as well as the union representative Mr. Casmiro D'Souza and Mr. Gerald Fernandes. The employer stated that the workman made his admission on 11-4-90 in the presence of the union representatives in writing and he also undertook to pay the cost of the said films of Rs. 15,514.88 in instalments and accordingly he paid an amount of Rs. 10,000/- on 16-4-90 and a receipt to that effect was issued to the workman. The employer stated that since there was a gross and serious misconduct on the part of the workman it was decided to conduct an enquiry and accordingly a show cause notice cum charge sheet was issued to the workman on 30-4-90 specifying the misconducts committed by him. The employer stated that an independent Inquiry Officer was appointed to conduct the enquiry against the workman. The employer stated that the workman fully participated in the enquiry conducted against him and the Inquiry Officer found the workman guilty of all the charges levelled against him. The employer stated that the management went through the proceedings of the findings of the Inquiry Officer as well as the past records of the workman and since the misconduct proved against the workman being grave and of serious nature the management proposed to award punishment of dismissal to the workman and accordingly he was given an opportunity to show cause as to why the proposed penalty should not be awarded to him. The employer stated that though sufficient time was given the workman did not submit his explanation to the show cause notice and therefore the employer dismissed the workman w.e.f. 31-10-92. The employer stated that the punishment of dismissal from service awarded to the workman is bonafide, just and legal. The employer denied that the charge sheet was not issued to the workman by the appointing authority or that the charge sheet is without jurisdiction and in

contravention of the Certified Standing Orders. The employer also denied that enquiry was conducted against the workman in contravention of the provisions of the Certified Standing Orders. The employer also denied that enquiry was conducted against the workman in contravention of the provisions of the Certified Standing Orders or in contravention of the principles of natural justice. The employer denied that the punishment awarded to the workman is punitive, mala fide, illegal or unjustified. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.-7.

4. On the pleadings of the parties, following issues were framed at Exb.-8.

Issue No. 1: Whether the Party I proves that the domestic enquiry held against him is not fair and proper ?

Issue No. 2: Whether the Party I proves that the charge sheet issued to him is without jurisdiction and in contravention of the Certified Standing Orders of the Party II ?

Issue No. 3: Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?

Issue No. 4: Whether the Party I proves that the termination of his services by the Party II w.e.f. 31-10-92 is illegal and unjustified ?

Issue No. 5: Whether Party I is entitled to any relief ?

Issue No. 6: What Award ?

5. Since the Issue Nos. 1, 2 and 3 were relating to enquiry conducted against the workman and proving of the charges of misconduct against him, the said issues were treated as preliminary issues and the parties led evidence on the said issues. By findings dated 31-10-2001 this Tribunal held that the domestic enquiry held against the workman is fair and proper. This Tribunal further held that the charges of misconduct levelled against the workman in the charge sheet dated 30-4-90 are proved. Thus the issue Nos. 1, 2 and 3 stood disposed of. Thereafter the workman as well as the employer were given opportunity to lead evidence on the other remaining issues, namely Issue No. 4 and 5. The Issue No. 4 pertained to whether the action of the employer in terminating the services of the workman with effect from 31-10-92 is legal and justified and the Issue No. 5 pertained to whether the workman was entitled to any relief.

6. My findings on the remaining issues are as follows:

Issue No. 4: In the negative.

Issue No. 5: In the negative.

Issue No. 6: As per order below.

REASONS

7. Issue No. 4: As per the charge sheet dated 30-4-90 the workman was charged for following misconducts.

1. Theft, fraud or dishonesty in connection with the employer's business or property.
2. Gross negligence.
3. Wilful damage to any property of the establishment or loss of employer's goods to the extent of Rs. 22,834.40 being the price of 365 film rolls.
4. Commission of any act subversive of discipline or good behaviour on the premises of the establishment.

By my findings dated 31-10-2001 the workman has been held guilty of the charge of being responsible for the shortage of 356 films. The said shortages had occurred because by manipulating the documents the workman showed as if the films were delivered to the parties but in fact he took them away for his own use. The above act on the part of the workman was held to be amounting to theft, fraud and dishonesty. The workman has been also held to be guilty of the charge of gross negligence in performance of his duties, and causing loss to the employer to the tune of Rs. 22834.40p. being the price of 365 film rolls. The workman was working as the Incharge of the godown of the employer at Bicholim where the shortages of 365 film rolls were found. The said film rolls were taken away by the workman by manipulating the documents and as such he was responsible for the said shortages. The workman had committed theft of the said rolls. The said theft was committed within the premises of the employer, and therefore it is an act subversive of good behaviour and discipline as it was bound to affect the adversely the discipline in the establishment. The above acts committed by the workman are of grave and serious nature.

8. Adv. Shri Bhise, the learned Advocate for the workman, submitted that employer has not led any evidence to justify the punishment of termination of service imposed on the workman whereas the workman has examined himself to show that the said punishment is not justified and it is disproportionate. He submitted that no evidence has been produced by the employer to show that the past service record of the workman was not good. He submitted that the workman was not

issued any memo, warning letter, or charge sheet in the past. He submitted that in the termination letter the employer did not state that the services were terminated because the employer lost faith in him. He submitted that the employer could have awarded lesser punishment instead of awarding extreme penalty. Adv. Shri P. J. Kamat submitted on the other hand that the charge which is held to be proved against the workman is that of committing theft of film rolls valued at more than Rs. 20,000/- and this charge is of serious nature. He submitted that though no evidence has been led on the past service record of the workman still since the charges which are proved are of serious nature, the punishment of termination of service is justified. He submitted that one solitary incident is enough to justify termination of service if the incident is of grave and serious nature as in the present case. In support of his contentions he relied upon the judgments of the Supreme Court in the case of Municipal Committee, Bahadurgarh v/s Krishnan Behari & Ors. reported in 1996 I CLR 667 and state of U. P. & Ors. v/s Nand Kishore Shukla & Anr. Reported in 1996 I CLR 786.

9. It is true that on the point of punishment only the workman has examined himself whereas the employer has not examined any witness. Though in the show cause notice dated 10th August, 1992 Exb. E-8 issued to the workman it is stated that his past record was gone through before deciding to dismiss him from service, no evidence has been produced by the employer regarding the past service record of the workman nor anything adverse has been brought on record in his cross examination in this respect. Thus there is nothing on record to show that the past service record of the workman was not good. However in my view the above fact by itself does not mean that the action of the employer in terminating the service of the workman is not legal and justified. The charges which have been proved against the workman are that of committing theft of the 365 film rolls belonging to the employer valued at Rs. 22834.40p. manipulating the documents of the employer, and of gross negligence in performing his duties. The workman was the Incharge of the godown from which the theft of the film rolls was committed by the workman. The offence which has been committed by the workman is very grave and serious. The Bombay High Court in the case of Sarabhai M. Chemicals (S. M. Chemicals and Electronics) Limited, reported in 1980 I LLJ 295 has held that it cannot be said that disciplinary proceedings for misconduct can never be taken against an employee on a charge of insubordination arising out of solitary instance of a lawful order and that for sustaining such a charge of insubordination several repeated mistakes of disobedience are necessary. The law which has been laid down by the Bombay High Court in the above case is that to punish an employee one solitary instance of misconduct is enough. Adv. Shri Kamat, the learned Advocate for the employer has relied upon the judgments of the Supreme Court in the case of Municipal Committee Bahadurgarh (supra) and Nand Kishore Shukla (supra). In the case of Municipal Committee, Bahadurgarh (supra) the clerk

had mis-appropriated the amount of Rs. 1548.78p. by falsifying the documents. In the criminal case the clerk was convicted and sentenced. In view of the said punishment the Municipal Committee dismissed the clerk from service. In appeal the Director of Local Bodies reduced the punishment to stoppage of four increments and directed that the period during which the said clerk was out of service should be treated as extra ordinary leave. The appeal filed by the Municipal Committee was dismissed by the Commissioner and the Writ Petition was also dismissed by the High Court. The Supreme Court however held that in a case of such nature there cannot be any other punishment than dismissal and any sympathy shown in such cases is totally uncalled for and opposed to public interest. The Supreme Court further held that the amount misappropriated may be small or large and that it is the act of misappropriation that is relevant. In the case of Nand Kishore Shukla (supra) the Supreme Court held that it is well settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the court would be loath to interfere with that part of the order. In that case the respondent Nand Kishore Shukla was removed from service as a result of proof of 5 heads of charges. In the case of Chandrakant Patil v/s Union of India & others reported in 1995 II CLR 445, the Bombay High Court has held that the past service record is required to be considered as a mitigating circumstance, but it is well settled that where the delinquent is guilty of serious misconduct then even one single misconduct like theft or connivance therein may warrant dismissal. The above judgements are applicable to the present case as the workman who was in charge of the godown had committed theft of the film rolls from the said godown belonging to the employer, valued at Rs. 22834.40p by manipulating the documents. He was also grossly negligent in performing his duties. The above act on the part of the workman was a grave and serious misconduct. Therefore, considering the nature of the misconduct committed by the workman and the seriousness and gravity of the misconduct involved, and the post which the workman was holding at the time of committing the theft, I am of the view that the punishment of termination of service imposed on the workman is legal and justified, I, therefore hold that the workman has failed to prove that the action of the employer in terminating the services of the workman with effect from 31-10-1992 is illegal and unjustified. Hence, I answer the issue No. 4 in the negative.

10. Issue No. 5: Since it has been held by me that the termination of service of the workman by the employer is legal and justified, the workman is not entitled to any relief. I, therefore, hold that the workman is not entitled to any relief, and answer the issue No. 5 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Photophone Industries (I) Ltd., Tivim, Karaswada, Bardez-Goa, in terminating the services of the workman Shri Shridas Goltekar, Assistant, with effect from 31-10-92 is legal and justified. It is hereby further held that the workman Shri Shridas Goltekar, is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2003-LAB-Part

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 11-11-2003 in reference No. IT/11/97, is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

V. R. Ghaisas, Under Secretary (Labour).

Panaji, 5th December, 2003.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/11/97

Shri Ashok Kolambkar,
Rep. by General Secretary,
K.T.C. Workers Union,
54 Defence Colony,
Alto-Porvorim-Goa.

.... Workman/Party I

V/s

M/s. Kadamba Transport
Corporation Ltd.,
Panaji-Goa.

.... Employer/Party II

Workman/Party-I - Absent.

Employer/Party-II - Represented by Adv. Shri A.
Palekar.

Panaji, dated 11-11-2003.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 20th January, 1997, bearing No. IRM/CON/SG/(46)/96/413 referred the following dispute for adjudication by this Tribunal.

"Whether the action of M/s. Kadamba Transport Corporation Limited, Panaji, in stopping one annual increment for the year 1993 of Shri Ashok Kolambkar, Conductor, vide Order No. KTC/PERS-V/4/(698/92-93/487) dated 26-5-1992, is legal and justified?

If not, what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/11/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party-I (for short, "Workman") filed his statement of claim at Exb.-5. The facts of the case in brief as pleaded by the workman are that he was employed with the party II/employer (short, "employer") as a Conductor w.e.f. 16-4-83 and he was posted at Margao depot of the employer. That on 13-12-90 when he was performing his duty as a Conductor on the bus plying between Karwar-Mapusa route, the said bus was checked by the Line Checking Staff and he was issued a default notice No. L. No. 03252 dated 13-12-90 pointing out some irregularity and he was asked to reply to the said default notice. That accordingly he submitted his explanation to the said default notice. That thereafter he was issued a charge sheet dated 5-2-90 and he replied to the said charge sheet denying the allegations made against him. That an enquiry was conducted into the said charge sheet and the enquiry officer submitted his findings to management. That thereafter he was issued a show cause notice to show cause as to why the punishment of stoppage of one annual increment should not be awarded against him and that he replied to the said show cause notice. That however he was awarded the punishment of stoppage of one annual increment by order dated 26-5-92. That on receipt of the said order he filed an appeal before the Managing Director but the Managing Director did not decide the said appeal for almost 3 years. That the Union namely the K.T.C. Drivers and Allied Employees Association by letter dated 27-2-96 raised the dispute before the Managing Director and also referred the matter to the Labour Commissioner for his intervention. That accordingly conciliation proceedings were held which resulted in failure and hence the reference of the dispute was made to this Tribunal for adjudication. The workman contended that the enquiry was conducted against him in violation of the principles of natural justice and the findings given by the enquiry officer are perverse and contrary to the evidence on record. The workman contended that the

punishment of stoppage of one annual increment awarded to him is illegal and therefore the said order of the employer is liable to be set aside.

3. The employer filed written statement at Exb.-6. The employer admitted that the workman was appointed as conductor w.e.f. 16-4-83. The employer stated that ever since his appointment the workman used to manipulate the legitimate revenue of the Corporation and he had committed number of misconducts as mentioned in the written statement. The employer stated that while the workman was on route Karwar-Mapusa on vehicle No. GDX-111 on 13-12-89 the Line checking staff checked the bus at Sanquelim and he was issued a default notice dated 13-12-89 and subsequently charge sheet dated 5-2-90 was issued to him. The employer stated that since the charges were of serious nature, on receipt of the explanation from the workman to the charge sheet, the disciplinary authority decided to conduct the departmental enquiry and accordingly enquiry was held and the workman participated in the said enquiry. The employer stated that on receipt of the report from the enquiry officer the disciplinary authority considered the same and after going through the past service records decided to impose penalty on the workman. The employer stated that the show cause notice dated 27-4-92 was issued to the workman and on receipt of the reply to the said show cause notice, as a good gesture and sympathy a lenient view was taken and a lesser punishment of stoppage of one annual increment for the year 1993 was imposed on the workman vide order dated 26-5-92. The employer stated that the appeal which was filed by the workman was considered and was rejected by the Appellate authority and the workman was informed accordingly. The employer denied that the enquiry was held in violation of the principles of natural justice or that the findings of the enquiry officer are perverse and contrary to the evidence on record. The employer stated that its action in stopping one annual increment of the workman for the year 1993 vide order dated 26-5-92 is legal and justified and the workman is not entitled to any relief. The workman thereafter filed rejoinder at Exb.-8.

4. On the pleadings of the parties following issues were framed at Exb.-9.

1. Whether the Party I proves that the domestic enquiry held against him is not fair and proper?
2. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether the Party I proves that the action of the Party II in stopping his one annual increment for the year 1993 is illegal and unjustified?
4. Whether the Party I is entitled to any relief?
5. What Award?

5. Since the issue Nos. 1, 2 were relating to the enquiry conducted against the workman and proving of the charges of misconduct against him, the said issues were treated as preliminary issues. After giving opportunity to the parties to lead evidence on the said issues, by findings dated 28-8-2002 this Tribunal held that the domestic enquiry conducted against the workman is fair and proper and that the charges of misconduct levelled against him vide charge sheet dated 5-2-90 are proved only to the extent of keeping the amount of Rs. 43/- belonging to the Corporation in his pen pocket and finding an amount of Rs. 12.45 short in his cash bag. It was held that the above said acts on the part of the workman are misconducts under Clause 28(XV) and (XXXV) of the Certified Standing Orders of the Employer/Corporation. Thus the issue Nos. 1 and 2 stood disposed of. Thereafter the case was fixed for recording the evidence of the parties on the remaining issues. Since the workman continued to remain absent his evidence on the remaining issues was closed on 12-9-2002 and thereafter the case was fixed for recording evidence of the employer. Accordingly in support of the punishment awarded to the workman the employer examined one witness, namely Shri A. S. Shirvoikar.

6. My findings on the remaining issues, i.e., issue Nos. 3, 4 and 5 are as follows:

- Issue No. 3: In the negative.
Issue No. 4: In the negative.
Issue No. 5: As per order below.

REASONS

7. Issue No. 3: As per the charge sheet dated 5-2-90 the workman was charged for following misconducts, under certified standing orders.

- Clause 28 (XV) Theft, fraud or dishonesty in connection with the employer's business or property inside or outside the establishment or the theft of property of another employer within the premises of the establishment.
- Clause 28 (XXXV) Breach of any rules or instructions given by superior for the proper functioning or safety of the establishment.

After this Tribunal had given the findings dated 28-8-2002 on the preliminary issues 1 and 2 holding that the domestic enquiry conducted against the workman is fair and proper and further holding that the charge of keeping an amount of Rs. 43/- belonging to the Corporation in his pocket and finding an amount of Rs. 12.45 in his cash bag is proved against the workman and that the said acts constituted misconducts under the Certified Standing Orders, the workman was given

opportunity to lead evidence to prove that the punishment of stopping one annual increment for the year 1993 imposed on him vide order dated 26-5-92 is not legal and justified. However, the workman remained absent and therefore his evidence was closed. The employer thereafter led evidence by examining its Personnel Officer Shri A. S. Shirvoikar in support of its contention that the punishment awarded to the workman is legal and justified.

8. The employer's witness Shri Shirvoikar in the course of his evidence has stated that before passing the order dated 26-5-92 imposing punishment on the workman he was issued a show cause notice and on receipt of his reply to the said show cause notice it was considered along with his past service records. He has stated that the past service record of the workman was not good. He has produced the default notices issued to the workman dated 6-2-88-Exb. E-6; 29-10-90-Exb. E-7; 15-1-91-Exb. E-9; 6-8-91-Exb. E-11 and 8-11-94-Exb. E-13. The said default notices show that they were issued to the workman because shortages were found with him when the bus was checked by the Line Checking Staff. Shri Shirvoikar has also produced warning letters issued to the workman dated 14-1-85-Exb. E-3; 26-3-88 Exb. E-5; 1-6-91 Exb. E-10 and 19-10-91 Exb. E-12. These warning letters were issued to the workman pursuant to the default notice issued to him mentioned in the said warning letters. Shri Shirvoikar has produced the order dated 6-12-86 at Exb. E-4 and 16-1-91 at Exb. E-8. By these orders fines were imposed on the workman pursuant to the default notice issued to him in respect of the irregularities committed by him. All the above documentary evidence produced by the employer has gone unchallenged as their witness Shri Shirvoikar was not cross examined. The documentary evidence produced by the employer sufficiently proves that the past service record of the workman was not good and he was in the habit of misappropriating the revenue belonging to the Corporation. In the present case also after holding the enquiry against the workman it was proved that he had kept with himself Rs. 43/- belonging to the Employer/Corporation and also an amount of Rs. 12.45 was found short in the cash bag. The said amounts belonged to the Employer/Corporation. The said acts on the part of the workman are dishonest acts committed by him with the intention of misappropriating the revenue of the Employer/Corporation. Therefore considering the nature of the misconduct committed by the workman and also considering his past service records as mentioned above, I am of the view that the punishment of stopping one annual increment for the year 1993 imposed upon the workman is legal and justified. I therefore hold that the workman has failed to prove that the action of the employer in imposing the punishment of stopping one annual increment for the year 1993 is illegal and not justified. I therefore answer the issue No. 3 in the negative.

9. Issue No. 4: Since it has been held by me that the punishment imposed of stopping one annual increment for the year 1993 imposed upon the workman by the employer vide order dated 26-5-92 is legal and justified, the workman is not entitled to any relief. I therefore hold that the workman is not entitled to any relief and answer the issue No. 4 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Kadamba Transport Corporation Limited, Panaji,

in stopping one annual increment for the year 1993 of the workman Shri Ashok Kolambkar, Conductor, vide Order No. KTC/PERS-V4/(698/92-93/487) dated 26-5-1992, is legal and justified. It is hereby further held that the workman Shri Ashok Kolambkar is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.